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Global Crossing

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January 28, 2000

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B-204
Washington, D.C. 20554

Re: CC Docket No. 00-4

Enclosed for filing please find an original plus six paper and one diskette copy of the Opposition of Global Crossing Local Services, Inc. and accompanying affidavit of Laurie A. Larson.

To acknowledge receipt please affix an appropriate notation of the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,



Michael J. Shortley, III

cc: Ms. Janice Myles (12 paper plus 1 diskette)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application of SBC Communications, Inc.,
Southwestern Bell Telephone Company, and
Southwestern Bell Communications Services,
Inc, d/b/a Southwestern Bell Long
Distance for Provision of In-Region,
InterLATA Services in Texas

CC Docket No. 00-4

OPPOSITION OF GLOBAL
CROSSING LOCAL SERVICES, INC.

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January 28, 2000

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Summary

Global Crossing Local Services submits this opposition to the Application of for authority to provide in-region, interLATA services in Texas. The Commission must evaluate each application on its own merits and must subject each to exacting scrutiny. The applicant bears the burden of proof on each and every element of the section 271 requirements, and the Commission should grant a 271 application if and only if it finds that the local market in question is irretrievably open to competition.

In reviewing SBC's application, the Commission can make no such finding. Simply put, Texas is not New York and SBC is not Bell Atlantic. Competitive local exchange carriers still face enormous hurdles in competing with Southwestern Bell in Texas. Some of these hurdles, admittedly, cannot be directly attributable to SBC, but nonetheless reflect the regulatory environment in Texas. Others are directly attributable to SBC and demonstrate its non-compliance with Section 271.

Municipal regulation in Texas has erected significant barriers to meaningful competition. Texas is one of only a handful of states -- the others, not coincidentally, being in SBC territory -- in which local *resellers* are required to enter into 911 agreements with every municipality in which they wish to do business. Municipal franchise regulation in Texas has significantly impeded entry. Global Crossing's ability to provide service in Dallas-Forth Worth was delayed over six months as a result of such regulation. In Houston, Global Crossing's ability to commence operations has been delayed by over one year, a delay that is largely, although not exclusively, a result of unreasonable municipal requirements.

For its part, SBC itself has not exactly been the most pro-competitive of the Bell companies. In Texas, SBC has:

- refused to provide interconnection without a corresponding imposition of usage restrictions in contravention of FCC regulations;
- failed to coordinate meet-point arrangements in a commercially responsible manner;
- refused for a lengthy period of time to provision unbundled loops absent a collocation agreement; and.
- failed to provide local number portability in a commercially responsible manner.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Application of SBC Communications, Inc.,
Southwestern Bell Telephone Company, and
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Inc, d/b/a Southwestern Bell Long
Distance for Provision of In-Region,
InterLATA Services in Texas**

CC Docket No. 00-4

**OPPOSITION OF GLOBAL
CROSSING LOCAL SERVICES, INC.**

Introduction

Global Crossing Local Services, Inc. ("Global Crossing"),¹ pursuant to the Bureau's Public Notice,² submits this opposition to the Application of SBC Communications, Inc. *et al* ("SBC"), for authority to provide in-region, interLATA services in Texas.³

On the heels of the Commission's approval of Bell Atlantic's New York Section 271 application,⁴ Southwestern Bell has filed the instant application. The perception

¹ Global Crossing Local Services is a facilities-based competitive local exchange carrier. Its affiliate -- Global Crossing Telemanagement, Inc. -- is a resale CLEC. Both companies currently operate in the State of Texas. See Affidavit of Laurie A. Larson, ¶¶ 3-4 (Jan. 28, 2000) ("Larson Aff.").

² Public Notice, CC Dkt. 00-4, *Comments Requested on Application by SBC Communications, Inc. for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Texas*, DA 00-37 (Jan. 10, 2000) ("Public Notice").

³ *Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Dkt. 00-4, Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas (Jan. 10, 2000) ("SBC Br.").

⁴ *Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*,

exists that the floodgates are now open and the Commission may confidently expect 271 applications to come pouring in. The filing of an application, however, should not be tantamount to its grant. The Commission must evaluate each application on its own merits and must subject each to exacting scrutiny. Section 271 demands no less. The applicant bears the burden of proof on each and every element of the section 271 requirements,⁵ and the Commission should grant a 271 application if and only if it finds that the local market in question is irretrievably open to competition.⁶

In reviewing SBC's application, the Commission can make no such finding. Simply put, Texas is not New York and SBC is not Bell Atlantic. Competitive local exchange carriers still face enormous hurdles in competing with Southwestern Bell in Texas. Some of these hurdles, admittedly, cannot be directly attributable to SBC, but nonetheless reflect the regulatory environment in Texas. Others are directly attributable to SBC and demonstrate its non-compliance with Section 271.

Municipal regulation in Texas has erected significant barriers to meaningful competition. Texas is one of only a handful of states -- the others, not coincidentally, being in SBC territory -- in which local *resellers* are required to enter into 911 agreements with every municipality in which they wish to do business. Municipal franchise regulation in Texas has significantly impeded entry. Global Crossing's ability to provide service in Dallas-Forth Worth was delayed over 6 months as a result of such

CC Dkt. 99-295, Memorandum Opinion and Order, FCC 99-404 (Dec. 22, 1999) ("New York Order").

⁵ *Id.*, ¶ 47; see also *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended, To Provide In-Region, InterLATA Services in Michigan*, CC Dkt. 97-137, Memorandum Opinion and Order, 12 FCC Rcd. 20543, 20567-68 (1997).

⁶ See SBC Br. at 9, *citing* 141 Cong. Rcd. S8188, S8195 (daily ed. June 13, 1995) (statement of Sen. Pressler).

regulation. In Houston, Global Crossing's ability to commence operations has been delayed by over one year, a delay that is largely, although not exclusively, a result of unreasonable requirements established by the Harris County 911 authority.

SBC itself has not exactly been the most pro-competitive of the Bell companies. In Global Crossing's experience, SBC has been the most difficult Bell company to deal with. As described in more detail below and in the accompanying affidavit of Laurie A. Larson, Global Crossing's General Manager - CLEC Business Development, with responsibility for Texas, SBC has:

- refused to provide interconnection without a corresponding imposition of usage restrictions in contravention of FCC regulations;
- failed to coordinate meet-point arrangements in a commercially responsible manner;
- refused for a lengthy period of time to provision unbundled loops absent a collocation agreement; and.
- failed to provide local number portability in a commercially responsible manner.

These are not the actions of an incumbent truly committed to opening its local market to competition. Rather, they reflect a pattern of passive resistance, at best. SBC may have done enough to permit it to file this application. Its actions, however, have fallen far short of meriting its grant. The Commission should deny the application.

Argument

THE COMMISSION SHOULD DENY SBC'S APPLICATION.

In granting Bell Atlantic's application, the Commission noted that:

It is also noteworthy that New York State has some of the most intensely competitive local exchange and exchange access markets in the nation. The track record of successful

competition places the present application in a different context from prior filings.⁷

The Commission should keep that observation in mind in evaluating SBC's application. While SBC's metrics may look impressive on paper, they do not tell the whole story. Both in terms of the regulatory environment in Texas and in terms of SBC's own track record, Texas is far from open to competition.

The regulatory environment in a given state may be as important as the specific steps that a particular Bell company may have taken to open its local markets to competition.⁸ Unlike New York, Texas is not a competition-friendly state. In Global Crossing's experience, Texas is one of the most difficult states in which they operate. Global Crossing spent more money getting into business than it did in any other state.⁹ It has also had more external problems opening particular markets in Texas than it has had in any other state.

In Dallas-Fort Worth, for example, Global Crossing's entry (on both a resale and a facilities basis) was delayed for months as a result of the insistence of the City of Dallas that Global Crossing required a franchise even though Global Crossing was not going to occupy any rights-of-way within the City. This legal matter was resolved -- to the extent that it has been -- only through litigation.¹⁰ Moreover, when the City of Dallas lost in the courts, Texas promptly approved legislation authorizing a "make-whole" fee

⁷ New York Order, ¶ 6.

⁸ See Larson Aff., ¶¶ 5-6.

⁹ *Id.*, ¶ 10.

¹⁰ See *AT&T Communications of the Southwest, Inc. v. City of Dallas*, 52 F. Supp. 2d 756 (N.D. Tex. 1999).

to restore funds that municipalities otherwise would have received through franchise fees. The franchise litigation significantly delayed Global Crossing's entry into Dallas.¹¹

Global Crossing has yet to commence operations in Houston as a result of unreasonable requirements imposed by the Harris County 911 authority. Harris County requires 72-hour back-up power capabilities -- a requirement that to Global Crossing's knowledge -- exists nowhere else in the country. This required Global Crossing to engage in significant new construction, add generators and add a 500-gallon fuel storage tank. Substantially as a result of Harris County's requirements, Global Crossing's ability to commence operations in Houston has been delayed by one year.¹²

Texas is also one of the few states in the nation in which even local resellers are required to enter into agreements with every 911 authority in which the reseller operates. Negotiating and entering into such agreements is a highly time-consuming and expensive process. It is also totally unnecessary as, by definition, resellers do not even operate any facilities, including 911 trunks.¹³

Global Crossing has not experienced this degree of municipal regulation anywhere else in the country and its experience has only come close in other SBC states. While these activities cannot be traced directly to SBC, they have a decided effect on the ability of a new entrant to compete with SBC. Unlike New York, the regulatory environment in Texas is far from pro-competitive.

¹¹ See Larson Aff., ¶ 7. In fact, it was only after Global Crossing acceded to the City's demands and entered into interim franchise agreements that Global Crossing was able to commence operations in Dallas. *Id.*

¹² *Id.*, ¶ 8.

¹³ *Id.*, ¶ 9.

However, even if the Commission were to ignore the regulatory climate in Texas, it could still not conclude that SBC has met the requirements for section 271. In particular, SBC fails to meet several of the checklist items. Much of what Global Crossing has to offer is anecdotal. Although the Commission has indicated that it places greater weight on objective performance data than it does on anecdotal evidence provided by competitors of the affected Bell company,¹⁴ the Commission should give serious consideration to anecdotal evidence. It is factual. If such incidents occur with respect to one carrier, it is more likely than not that they can and do reoccur with other carriers. It may be indicative of systemic failures.¹⁵ In addition, failures by SBC can be and are customer-affecting. Customers, of course, will blame their service provider, thus injuring that competitor's reputation and making a customer more disposed to return to the incumbent. SBC's deficiencies are described below.

In Houston, Global Crossing had an OC-3 provisioned by SBC for carrying access traffic to Global Crossing's point of presence. Although that same facility could have been used to provision Global Crossing's local traffic, SBC refused to process Global Crossing's local orders that would have used that facility. Rather, it required Global Crossing to acquire an additional OC-3 to carry purely local traffic. This cost Global Crossing an estimated \$500,000.¹⁶ It is also a patently illegal use restriction.¹⁷ SBC's only justification was that it was contrary to company policy to permit local and

¹⁴ New York Order, ¶ 50.

¹⁵ *Id.*

¹⁶ Larson Aff., ¶ 12.

¹⁷ The Commission has long recognized that both interstate and intrastate traffic may traverse the same facility and has developed rules to assign that traffic jurisdictionally. See 47 C.F.R. § 36.154(a); *MTS and WATS Market Structure – Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*. CC Dkt. 78-72, Decision and Order, 4 FCC Rcd. 5660 (1989).

non-local traffic to traverse the same facility.¹⁸ That action constituted a refusal to provide unbundled local transport.¹⁹

Similarly, SBC seems incapable of provisioning, in anything remotely resembling a timely fashion, facilities that are jointly provided between SBC and GTE. This is of critical significance in a metropolitan area such as Dallas where a significant portion of that territory is served by GTE. In Global Crossing's experience, it takes anywhere from 90 to 180 days to have a jointly-provided circuit made available. Moreover, SBC does little to facilitate the provisioning of such facilities. In fact, Global Crossing will usually need to arrange conference to facilitate the provisioning of such facilities.²⁰ This also constitutes a refusal to provide unbundled network elements and unbundled local transport.

For months, SBC refused to provide Global Crossing with access to unbundled network elements unless Global Crossing had an operational collocation arrangement with SBC. This insistence occurred despite the fact that a collocation arrangement is operationally unnecessary and not required by Commission rule. SBC eventually -- and only recently -- backed away from this requirement, but it did impose unnecessary costs and delay on Global Crossing.²¹

¹⁸ Larson Aff., ¶ 12.

¹⁹ See 47 U.S.C. § 271(a)(2)(B)(v); *see also New York Order*, ¶ 340.

In the New York Order, the Commission concluded that it would not consider the provision of special access in determining checklist compliance. *Id.* There, parties complained about the timeliness of Bell Atlantic's provision of special access services. Here, in contrast, SBC refused to provide local transport facilities to Global Crossing unless those facilities were not also used to carry interstate traffic. This is entirely inappropriate.

²⁰ Larson Aff., ¶ 13.

²¹ *Id.*, ¶ 14.

Finally, SBC's ability to provide local number portability in a reliable manner is questionable. On at least three occasions in the last year, SBC apparently failed to update its switch translations properly so that local calls to a Global Crossing customer with a ported number were unable to be completed. Long distance calls could be terminated, but local calls were blocked. In these instances, it took SBC approximately 20 business days to correct this situation. Although SBC was supposed to test its number translations so that its switches recognized Global Crossing's NXXs, this apparently was not done or at least was done improperly. Moreover, when Global Crossing asked for SBC's test results, SBC informed Global Crossing that this data was proprietary and refused to share it.²² This constitutes a failure of checklist item 11 -- number portability.²³

Based upon Global Crossing's experiences, it is apparent that SBC's local markets in Texas are not irretrievably open to competition and, more importantly, that SBC has failed to satisfy a number of section 271 checklist items.

²² *Id.*, ¶ 15.

²³ *See* 47 U.S.C. § 271(c)(2)(B)(xi).

Conclusion

This application presents the Commission with a crucial test. Having granted one section 271 application, will the Commission succumb to pressure to grant every application that is heretofore filed. Alternatively, will the Commission continue its practice of evaluating each application dispassionately on its merits and grant only those that are truly deserving. The Commission may demonstrate its commitment to the latter alternative by denying SBC's application.

Respectfully submitted,



Michael J. Shortley, III

Attorney for Global Crossing
Local Services, Inc.

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

January 28, 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application of SBC Communications, Inc.,)	
Southwestern Bell Telephone Company, and)	CC Docket No. 00-4
Southwestern Bell Communications Services,)	
Inc, d/b/a Southwestern Bell Long)	
Distance for Provision of In-Region,)	
InterLATA Services in Texas)	
STATE OF NEW YORK)	
	ss.:	
COUNTY OF MONROE)	

**AFFIDAVIT OF
LAURIE A. LARSON**

LAURIE A. LARSON, being duly sworn, deposes and says that:

1. I am General Manager, CLEC Business Development for Global Crossing Local Services, Inc. and Global Crossing Telemanagement, Inc. In this capacity, I am responsible for Global Crossing's competitive local exchange carrier ("CLEC") operations in, among other places, the five original Southwestern Bell Telephone Company ("SBC") states, including Texas. I submit this affidavit in opposition to SBC's application to provide in-region, interLATA services within the State of Texas.

2. Global Crossing Telemanagement is Global Crossing's CLEC resale company, and Global Crossing Local Services is Global Crossing's CLEC facilities-based company. I am responsible for the operations of both companies within the State of Texas.

3. Global Crossing Telemanagement operates throughout SBC and GTE territory in the State of Texas. Global Crossing Telemanagement has been certificated in Texas since December 11, 1997. It was originally certificated under the name

Frontier Telemanagement Inc. Today, Global Crossing Telemanagement serves approximately 6,781 access lines in Texas

4. Global Crossing Local Services today is operational in the Dallas-Fort Worth metropolitan area. It is also -- and has been for over one year -- preparing to commence operations in the Houston metropolitan area. Global Crossing Local Services -- formerly Frontier Local Services -- has been certificated in Texas since December 11, 1997 and currently serves approximately 2,823 access lines in Texas.

5. In my view, both the regulatory environment under which Global Crossing must operate as well as the specific conduct of the incumbent Bell company are both critical determinants of our ability successfully to compete. On both scores -- and particularly on the facilities-based side of our business -- Texas is the most difficult state in which Global Crossing operates. This is due both to the regulatory environment we face in Texas and to SBC's operational deficiencies.

6. The regulatory environment is difficult. By this statement, I do not refer to the policies or practices of the Texas Commission. I refer to the myriad of local regulations we confront. Most of these are costly, unnecessary and which I have seen in only a few other states.

7. Our ability to commence operations in the Dallas-Fort Worth area was substantially hindered by the insistence of the City of Dallas that both our CLEC companies needed franchises to operate within the City. The City insisted upon this requirement despite the fact that neither entity was to occupy public rights-of-way. As a reseller, Global Crossing Telemanagement owns no facilities. Global Crossing Local Services owns switching, but not transmission, facilities and would, therefore, also not occupy rights-of-way. SBC refused to provision facilities for us until we obtained

franchises. We were delayed in commencing service in Dallas until we agreed to interim franchises, despite the fact that this matter was in litigation. I estimate that the dispute with the City of Dallas delayed our entry by at least 6 months.

8. We are still yet to commence operations in the City of Houston because of unreasonable requirements imposed by the Harris County 911 authority. The authority requires 72-hour emergency back-up power, a requirement that to my knowledge, exists nowhere else in the country. As a result of this requirement, we were required to engage in a substantial amount of new construction, install additional generating capacity and a 500-gallon fuel tank. Substantially as a result of Harris County's requirements, our ability to commence operations in Houston has been delayed by over one year to date.

9. In addition, Texas is one of the few states of which I am aware -- Kansas and Missouri being the other two -- in which a pure resale entity is required to enter into 911 agreements with each municipality in which it operates. This makes no sense to me as a reseller does not operate its own 911 trunks. This unnecessary requirement imposes significant costs upon us.

10. This regulatory environment makes it difficult for us to compete and certainly raises our costs of doing business. In fact, Global Crossing has spent more money to become operational in Texas than it has in any other state. Our outside legal expense, for example, has exceeded \$250,000. In New York, by contrast, we had no outside legal expense.

11. For its part, SBC has not been the most competitor-friendly Bell company. Several examples will illustrate this point. However, before I provide the examples, there is one point that I care to make. I understand that SBC has presented a number

of performance metrics that it claims demonstrate its even-handed treatment of its competitors. Performance metrics are fine as far as they go. They cannot, however, measure the impact on our customers and our reputation when SBC does not properly do its job. Thus, while the evidence that I present as to SBC's conduct is anecdotal, I urge the Commission to consider it carefully. It reflects the reality of conducting business in Texas.

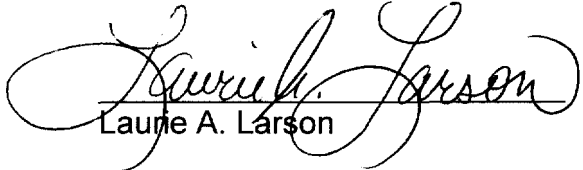
12. In Houston, Global Crossing's long distance company has an OC-3, provisioned by SBC, for carrying its long-distance traffic. That same facility could have been used to carry Global Crossing's local traffic to its point of presence for switching. SBC, however, refused to process Global Crossing's local interconnection orders that would have utilized the existing OC-3 interconnection. Rather, SBC insisted that Global Crossing order a new OC-3 solely to carry local traffic. This additional OC-3 cost Global Crossing \$500,000. SBC's only justification was that this interconnection arrangement was against company policy.

13. SBC also has not been able to provision meet-point circuits between SBC and GTE properly. It takes SBC approximately 90-180 days to provision a meet-point circuit. The ability to provision service to meet-point customers is important, particularly in an area like Dallas-Fort Worth where a substantial portion of the geographic area is served by GTE. SBC is not terribly helpful in facilitating joint SBC-GTE facilities. In fact, it is often necessary for me to arrange conference calls to arrange the provisioning of such facilities.

14. For months, SBC refused to provide unbundled network elements to Global Crossing in the absence of a working collocation arrangement. SBC insisted

upon this despite the fact that a collocation arrangement was not needed. SBC finally backed off this insistence.

15. Finally, SBC's provisioning of local number portability has been spotty. SBC is supposed to program its switches so that the switches will recognize calls that terminate to a Global Crossing customer with a ported number. On at least three occasions, SBC apparently failed to do so properly as local calls could not be terminated to Global Crossing's customers. In these cases, it took an average of 20 business days to correct the problem. Moreover, when I asked SBC to share its best results with Global Crossing, SBC refused and claimed that the results were proprietary. Although none of these customers has left Global Crossing, we have had to give these customers service credits to retain their business and goodwill. Nonetheless, service-affecting problems such as these plainly hurt our reputation with our customers.


Laurie A. Larson

Sworn to before me this
5TH day of January, 2000


Notary Public

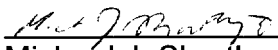
CAROL A. PERSONTE
Notary Public, State of New York
Qualified in Monroe County
Commission Expires Dec. 8, 2000

Certificate of Service

I hereby certify that, on this 28th day of January, 2000, copies of the foregoing Opposition of Global Crossing Local Services, Inc. and accompanying Affidavit of Laurie A. Larson were served by overnight mail, fees prepaid, upon:

Donald H. Russell, Esq.
United States Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530

Mr. James Galloway
Filing Clerk
Texas Public Utilities Commission
1701 N. Congress Avenue
Austin, TX 78711


Michael J. Shortley, III